

#### **City Council**

Fremont, California

Bob Wasserman, Mayor Steve Cho, Vice Mayor Dominic D. Dutra Bob Wieckowski Anu Natarajan

#### **City Staff**

Fred Diaz, City Manager
Harvey E. Levine, City Attorney
Christine Daniel, Deputy City Manager
Melissa Stevenson Dile, Deputy City Manager

Dawn G. Abrahamson, City Clerk
John Bjurman, Chief Technology Officer
Nancy Carlson, Human Resources Director
Harriet Commons, Finance Director
Daren Fields, Economic Dev. Director
Annabell Holland, Parks & Recreation Dir.
Norm Hughes, City Engineer
Jill Keimach, Community Dev. Director
Bruce Martin, Fire Chief
Jim Pierson, Transportation & Ops Director
Jeff Schwob, Planning Director
Suzanne Shenfil, Human Services Director
Craig Steckler, Chief of Police
Elisa Tierney, Redevelopment Director

## City Council Agenda and Report [Redevelopment Agency of Fremont]

#### **General Order of Business**

- 1. Preliminary
  - Call to Order
  - Salute to the Flag
  - Roll Call
- 2. Consent Calendar
- 3. Ceremonial Items
- 4. Public Communications
- 5. Scheduled Items
  - Public Hearings
  - Appeals
  - Reports from Commissions, Boards and Committees
- 6. Report from City Attorney
- 7. Report from City Manager
- 8. Council Communications
- 9. Adjournment

#### **Order of Discussion**

Generally, the order of discussion after introduction of an item by the Mayor will include comments and information by staff followed by City Council questions and inquiries. The applicant, or their authorized representative, or interested citizens, may then speak on the item; each speaker may only speak once to each item. At the close of public discussion, the item will be considered by the City Council and action taken. Items on the agenda may be moved from the order listed.

#### Consent Calendar

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which case the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address the City Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

Agenda and Report • Fremont City Council Meeting • October 3, 2006



#### Addressing the Council

Any person may speak once on any item under discussion by the City Council after receiving recognition by the Mayor. Speaker cards will be available prior to and during the meeting. To address City Council, a card must be submitted to the City Clerk indicating name, address and the number of the item upon which a person wishes to speak. When addressing the City Council, please walk to the lectern located in front of the City Council. State your name. In order to ensure all persons have the opportunity to speak, a time limit will be set by the Mayor for each speaker (see instructions on speaker card). In the interest of time, each speaker may only speak once on each individual agenda item; please limit your comments to new material; do not repeat what a prior speaker has said.

#### **Oral Communications**

Any person desiring to speak on a matter which is not scheduled on this agenda may do so under the Oral Communications section of Public Communications. Please submit your speaker card to the City Clerk prior to the commencement of Oral Communications. Only those who have submitted cards prior to the beginning of Oral Communications will be permitted to speak. Please be aware the California Government Code prohibits the City Council from taking any immediate action on an item which does not appear on the agenda, unless the item meets stringent statutory requirements. The Mayor will limit the length of your presentation (see instructions on speaker card) and each speaker may only speak once on each agenda item.

To leave a voice message for all Councilmembers and the Mayor simultaneously, dial 284-4090.

The City Council Agendas may be accessed by computer at the following Worldwide Web Address: www.fremont.gov

#### **Information**

Copies of the Agenda and Report are available in the lobbies of the Fremont City Hall, 3300 Capitol Avenue and the Development Services Center, 39550 Liberty Street, on Friday preceding a regularly scheduled City Council meeting. Supplemental documents relating to specific agenda items are available at the Office of the City Clerk.

The regular meetings of the Fremont City Council are broadcast on Cable Television Channel 27 and can be seen via webcast on our website (www.Fremont.gov).

Assistance will be provided to those requiring accommodations for disabilities in compliance with the Americans with Disabilities Act of 1990. Interested persons must request the accommodation at least 2 working days in advance of the meeting by contacting the City Clerk at (510) 284-4060. To listen to a recorded message listing upcoming agenda items for the City Council, Planning Commission, Recreation Commission, Human Relations Commission, and Senior Citizens Commission, call (510) 284-4094. Council meetings are open captioned for the deaf in the Council Chambers and closed captioned for home viewing.

Information about the City or items scheduled on the Agenda and Report may be referred to:

Address: City Clerk

City of Fremont

3300 Capitol Avenue, Bldg. A Fremont, California 94538

Telephone: (510) 284-4060

Your interest in the conduct of your City's business is appreciated.

### NOTICE AND AGENDA OF SPECIAL MEETING CLOSED SESSION

#### FREMONT CITY COUNCIL

DATE: Tuesday, October 3, 2006

TIME: 6:00 p.m.

LOCATION: Fremont Room, 3300 Capitol Avenue, Fremont

The Council will convene a special meeting. It is anticipated the Council will immediately adjourn the meeting to a closed session to confer with and receive advice from its attorney regarding anticipated litigation against the City in one matter and for granting authority to its real property negotiators, as follows:

#### CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

This Closed Session is authorized by subdivision (b)(1) and (b) (3) (A) of Section 54956.9 of the Government Code and will pertain to possible initiation of litigation against the City in one matter.

**CONFERENCE WITH REAL PROPERTY NEGOTIATORS:** This Closed Session is authorized by Government Code Section 54956.8 at the time and place stated above to confer with and grant authority to its real property negotiators regarding:

### **OSGOOD ROAD WIDENING PROJECT (PWC 8173)**

From Washington to Grimmer

			Acquisition Areas (s.f.)			s (s.f.)
Owner	Address	APN	Fee	PSE	TCE	Sidewalk Easement
WEST SIDE						
Mumford	41753	525-0342-003-00	641	636	942	77
Timmons	41965	525-0339-002-00	110	600	801	64
Hardy 42223 5		525-0339-005-00	52	312	231	37
Greene	42255	525-0339-007-00	52	312	254	46

Velasco	42269	525-0339-008-00	52	312	291	43
Mission Peak Hall Association	42281	525-0339-009-00	62	312	216	32
D & J Construction	42333	525-0339-011-02 525-0339-010-04			688	
Baker	42359	525-0339-013-00	85	510	556	87
Racca	42387	525-0339-014-00	75	450	461	38

#### **EAST SIDE**

Nielson	41688	525-0345-032-09	840	307	587	45
Wolfe	41700	525-0345-029-02	776	307	440	45
Hatsushi	41742	525-0345-027-02	779	306	488	43
Liu	41760	525-0345-026-02	818	306	487	50
Humphreys	41786	525-0345-025-02	961	342	377	43
Valani	41816	525-0345-023-00	1,450	480	423	45
Tan	41868	525-0345-021-02	2,981	900	720	43
Casiano	42218	525-0336-005-00	1,261	360	306	35

The Brown Act requires the negotiators (even when not attending the meeting) to be listed in this notice. Those negotiators are:

For the City – (which will be represented at the meeting); Randy Sabado, Real Property Manager and Harvey Levine, Agency Attorney.

This Special Meeting is being called by Mayor Wasserman.

This notice was delivered to the City Council and The Argus, in addition to being posted at the City of Fremont, City Hall.

# AGENDA FREMONT CITY COUNCIL REGULAR MEETING OCOTOBER 3, 2006 COUNCIL CHAMBERS, 3300 CAPITOL AVE., BUILDING A 7:00 P.M.

#### 1. PRELIMINARY

- 1.1 Call to Order
- 1.2 Salute the Flag
- 1.3 Roll Call
- 1.4 Announcements by Mayor / City Manager

#### 2. CONSENT CALENDAR

Items on the Consent Calendar are considered to be routine by the City Council and will be enacted by one motion and one vote. There will be no separate discussion of these items unless a Councilmember or citizen so requests, in which event the item will be removed from the Consent Calendar and considered separately. Additionally, other items without a "Request to Address Council" card in opposition may be added to the consent calendar. The City Attorney will read the title of ordinances to be adopted.

- 2.1 Motion to Waive Further Reading of Proposed Ordinances (This permits reading the title only in lieu of reciting the entire text.)
- 2.2 Approval of Minutes for the Special Work Session of September 19, 2006
- 2.3 SECOND READING OF AN ORDINANCE AMENDING FREMONT MUNICIPAL CODE SECTIONS 8-22135, 8-22171, 8-22173, 8-22174, 8-22175, 8-22176 AND 8-22177, ADDING SECTION 8-22170(H), AND DELETING SECTIONS 8-22135.05 AND 8-22171(M)), ALL RELATED TO RESIDENTIAL CONDOMINIUM CONVERSIONS
  - RECOMMENDATION: Adopt ordinance.
- 2.4 SECOND READING OF AN ORDINANCE AMENDING CHAPTER 2, TITLE VIII OF THE FREMONT MUNICIPAL CODE BY REZONING TEN PARCELS LOCATED ON THE WESTERN HALF OF THE BLOCK BOUNDED BY BRYANT STREET BETWEEN ANZA STREET AND GROVE AVENUE FROM "COMMUNITY COMMERCIAL HISTORICAL OVERLAY AND HILLSIDE COMBINING (CC-H-H-I)" DISTRICT TO "PLANNED DISTRICT, HISTORICAL OVERLAY (P-2005-239(H))" DISTRICT

RECOMMENDATION: Adopt ordinance.

#### 2.5 FREMONT BOULEVARD IMPROVEMENTS, 8378 (PWC)

Approval of Plans and Specifications, Award of Contract to Lowest Responsible Bidder for Fremont Boulevard Improvements between Cushing Parkway and West Warren Avenue, 8378 (PWC)

#### Contact Person:

Name: Jeanne Suyeishi Norm Hughes Title: Associate Civil Engineer City Engineer

Dept.: Community Development Community Development

Phone: 510-494-4728 510-474-4748

E-Mail: jsuyeishi@ci.fremont.ca.us nhughes@ci.fremont.ca.us

#### RECOMMENDATIONS:

- 1. Find that the Fremont Boulevard Improvement project is exempt from CEQA per Section 15301 because the project is a minor alteration to an existing public structure.
- 2. Approve the plans and specifications for Fremont Boulevard Improvements between Cushing Parkway and West Warren Avenue, 8378 (PWC).
- 3. Accept the bid and award the construction contract for Fremont Boulevard Improvements between Cushing Parkway and West Warren Avenue, 8378 (PWC) to the lowest responsible bidder, Grade Tech, Inc., in the amount of \$511,212.00 and authorize the City Manager or designee to execute the contract.

#### 2.6 WASHINGTON BOULEVARD/PASEO PADRE PARKWAY GRADE SEPARATION PROJECT - APPROVAL OF UTILITY AGREEMENT RELATED TO PRELIMINARY EARTHWORK

Authorization for the City Manager to Execute a Utility Agreement with the City and County of San Francisco Public Utilities Commission to Reimburse the City for Work to be Added to the City's Ongoing Washington Boulevard/Paseo Padre Parkway Grade Separation Earthwork Contract

#### Contact Person:

Name: Jim Pierson Title: Director

Dept.: Transportation and Operations

Phone: 510-494-4722

*E-Mail: jpierson@ci.fremont.ca.us* 

RECOMMENDATION: Authorize the City Manager or his designee to execute a Utility Agreement with the City and County of San Francisco Public Utilities Commission in an amount not-to-exceed \$450,000, to reimburse the City for work to be added to the City's ongoing Washington Boulevard/Paseo Padre Parkway Grade Separation Earthwork Contract.

### 2.7 CLOSE-OUT OF MAINTENANCE CENTER PROJECT; APPROPRIATION OF FUNDS

Approve Close-out of New Maintenance Center Project (PWC 8038) and Corresponding Appropriation of Funds

#### Contact Person:

Name: Norm Hughes Jim Pierson Title: City Engineer Director

Dept.: Community Development Transportation and Operations

Phone: 510-494-4748 510-494-4723

E-Mail: nhughes@ci.fremont.ca.us jpierson@ci.fremont.ca.us

RECOMMENDATION: Transfer \$324,148 from the Maintenance Fund (Fund 500) unallocated fund balance to Fund 501 (Capital Projects General Fund) and appropriate the funds to 501PWC8038 for project close out of the Maintenance Center.

#### 3. CEREMONIAL ITEMS

- 3.1 Fremont Frosters Day Proclamation, October 14
- 3.2 Resolution Supporting Binational Health Week, October 7-14
- 3.3 National Arts & Humanities Month
- 3.4 Fire Prevention Week Proclamation, October 8-14
- 3.5 Recognition of the 'People's Choice' Artists from the Celebrate Fremont At the Park 'Art, Not 4 Sale' Event

#### 4. PUBLIC COMMUNICATIONS

- 4.1 Written Communications None.
- 4.2 Oral Communications

#### **REDEVELOPMENT AGENCY – None.**

#### **PUBLIC FINANCING AUTHORITY – None.**

#### CONSIDERATION OF ITEMS REMOVED FROM CONSENT CALENDAR

- **5. SCHEDULED ITEMS** None.
- 6. REPORT FROM CITY ATTORNEY
  - 6.1 Report Out from Closed Session of Any Final Action

#### 7. REPORT FROM CITY MANAGER

7.1 WASHINGTON BOULEVARD/PASEO PADRE PARKWAY GRADE SEPARATION PROJECT UPDATE AND APPROVAL FOR CONTRACT ADVERTISEMENT

Update on the Current Status of the Washington Boulevard/Paseo Padre Parkway Grade Separation Project and Request for Council Authorization to Advertise the Main Construction Contract Documents for Bids

#### Contact Person:

Name: Jim Pierson Title: Director

Dept.: Transportation and Operations

Phone: 510-494-4722

E-Mail: jpierson@ci.fremont.ca.us

RECOMMENDATION: Authorize the advertisement of the main Washington Boulevard/Paseo Padre Parkway Grade Separation construction contract and approve including an asphalt escalation clause with a maximum increase or decrease in compensation of \$500,000.

#### 8. COUNCIL COMMUNICATIONS

8.1 Council Referrals – None.

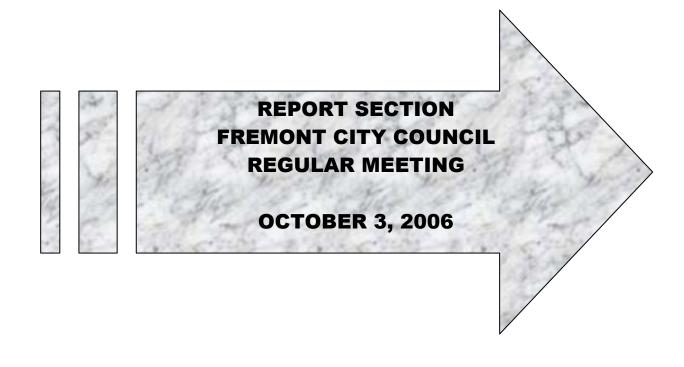
#### 8.2 Legislation

8.2.1 Discussion of City Position on Proposed Legislation Described in the League of California Cities Priority Focus Bulletin No. 37-2006. Council may direct staff to act on positions taken by Council.

Enclosure: League of California Cities Priority Focus Bulletin (Copies Available in the City Clerk's Office)

8.3 Oral Reports on Meetings and Events

#### 9. ADJOURNMENT



\*2.3 SECOND READING OF AN ORDINANCE AMENDING FREMONT MUNICIPAL CODE SECTIONS 8-22135, 8-22171, 8-22173, 8-22174, 8-22175, 8-22176 AND 8-22177, ADDING SECTION 8-22170(H), AND DELETING SECTIONS 8-22135.05 AND 8-22171(M)), ALL RELATED TO RESIDENTIAL CONDOMINIUM CONVERSIONS

**ENCLOSURE:** Ordinance.

**RECOMMENDATION:** Adopt ordinance.

\*2.4 SECOND READING OF AN ORDINANCE AMENDING CHAPTER 2, TITLE VIII OF THE FREMONT MUNICIPAL CODE BY REZONING TEN PARCELS LOCATED ON THE WESTERN HALF OF THE BLOCK BOUNDED BY BRYANT STREET BETWEEN ANZA STREET AND GROVE AVENUE FROM "COMMUNITY COMMERCIAL HISTORICAL OVERLAY AND HILLSIDE COMBINING (CC-H-H-I)" DISTRICT TO "PLANNED DISTRICT, HISTORICAL OVERLAY (P-2005-239(H))" DISTRICT

**ENCLOSURE:** Ordinance.

**RECOMMENDATION:** Adopt ordinance.

#### \*2.5 FREMONT BOULEVARD IMPROVEMENTS, 8378 (PWC)

Approval of Plans and Specifications, Award of Contract to Lowest Responsible Bidder for Fremont Boulevard Improvements between Cushing Parkway and West Warren Avenue, 8378 (PWC)

#### **Contact Person:**

Name: Jeanne Suyeishi Norm Hughes Title: Associate Civil Engineer City Engineer

Dept.: Community Development Community Development

Phone: 510-494-4728 510-474-4748

E-Mail: jsuyeishi@ci.fremont.ca.us nhughes@ci.fremont.ca.us

**Executive Summary:** The purpose of this report is to recommend that the City Council approve the plans and specifications for the Fremont Boulevard Improvements between Cushing Parkway and West Warren Avenue, 8378 (PWC), accept the bid, and award the contract for construction to Grade Tech, Inc. in the amount of \$511,212.00.

**BACKGROUND:** In July 1998, the City Council approved a project to improve Fremont Boulevard south of Cushing Parkway as part of the Capital Improvement Program. This project will widen the pavement on the west side of Fremont Boulevard to add one lane in the southbound direction between Cushing Parkway and West Warren Avenue, install a storm drain system and construct curbs, swales and ditches to drain the future street area into the drainage system. The widening is needed to meet the anticipated increase in traffic due to the closure of the Gateway Boulevard ramps with the I880/Mission Boulevard construction contract

#### **Discussion:**

**Bid Results:** Staff opened bids on September 19, 2006 for Fremont Boulevard Improvements between Cushing Parkway and West Warren Avenue, 8378 (PWC). The bids are as follows:

BIDDER	TOTAL BID	RANK
Grade Tech Inc.	\$ 511,212.00	1*
Granite Construction	\$ 514,757.00	2*
Redgwick Construction Company	\$ 633,813.00	3
Sposeto Engineering, Inc.	\$ 728,641.50	4
DeSilva Gates Construction	\$ 736,111.00	5
Engineer's Estimate	\$510,000.00	

<sup>\*</sup> Mathematically corrected

The low monetary bidder, Grade Tech, Inc., is a responsible bidder with experience in this type of work. Their bid is responsive to the bid specifications and all bid documents are in order.

**Project Costs:** The following is an estimate of the project costs:

Preliminary Engineering, Design & Administration	\$158,700
Construction Contract (Low Bid – includes \$47,000 construction contingency)	\$511,212
Construction, Surveying & Administration (estimate)	\$80,000
Project Contingencies	\$51,000
TOTAL Estimated Construction Costs	\$800,912

**Funding:** Funding is available for the project as follows:

Traffic Impact Fees	<u>\$1,050,000</u>
<b>TOTAL Estimated Available Funding</b>	\$1,050,000

Based on the amount of the low bid and project cost estimates, there are sufficient funds budgeted for this project.

**Environmental:** The Fremont Boulevard Improvement project is exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15301 (Existing Facilities) because the project is a minor alteration to an existing public structure.

**ENCLOSURE:** None.

#### **RECOMMENDATIONS:**

- 1. Find that the Fremont Boulevard Improvement project is exempt from CEQA per Section 15301 because the project is a minor alteration to an existing public structure.
- 2. Approve the plans and specifications for Fremont Boulevard Improvements between Cushing Parkway and West Warren Avenue, 8378 (PWC).
- 3. Accept the bid and award the construction contract for Fremont Boulevard Improvements between Cushing Parkway and West Warren Avenue, 8378 (PWC) to the lowest responsible bidder, Grade Tech, Inc., in the amount of \$511,212.00 and authorize the City Manager or designee to execute the contract.

# \*2.6 WASHINGTON BOULEVARD/PASEO PADRE PARKWAY GRADE SEPARATION PROJECT - APPROVAL OF UTILITY AGREEMENT RELATED TO PRELIMINARY EARTHWORK

Authorization for the City Manager to Execute a Utility Agreement with the City and County of San Francisco Public Utilities Commission to Reimburse the City for Work to be Added to the City's Ongoing Washington Boulevard/Paseo Padre Parkway Grade Separation Earthwork Contract

#### **Contact Person:**

Name: Jim Pierson Title: Director

Dept.: Transportation and Operations

Phone: 510-494-4722

E-Mail: jpierson@ci.fremont.ca.us

Executive Summary: This report asks for Council authorization for the City Manager to execute a Utility Agreement with the City and County of San Francisco Public Utilities Commission (CCSFPUC). The Agreement calls for the City to issue a contract change order to the City's ongoing Grade Separation Earthwork Contract to place earth fill ("surcharge") over the property where three large CCSFPUC waterline casings will be placed in the future. The surcharge will be used to compact the soil so the casings will not settle after they are in place. The casings will be installed as part of the City's main Grade Separation contract and will be used for the future relocation of the two Hetch-Hetchy waterlines north of Paseo Padre Parkway plus a possible third pipeline. The Agreement requires that CCSFPUC reimburse the City for all of the work associated with placing the surcharge, including the City's administrative costs, in a total amount that does not exceed \$450,000. Using the City's ongoing Grade Separation Earthwork Contractor, Galeb Paving, to place this surcharge is the most efficient and expedient way to accomplish this work without impacting the City's upcoming main Grade Separation construction contract.

BACKGROUND: The Washington Boulevard/Paseo Padre Parkway Grade Separation Project generally consists of constructing an underpass at Paseo Padre Parkway and an overpass at Washington Boulevard, and relocating approximately 1.5 miles of Union Pacific Railroad (UPRR) track. The relocated UPRR tracks will cross over the two existing Hetch-Hetchy waterlines in a new location. Staff has been working with CCSFPUC staff for several years regarding the design of a new UPRR bridge over the Hetch-Hetchy waterlines. Approximately a year ago, the bridge design was 90% complete. However, a few months ago CCSFPUC management told City staff that the existing bridge design was not acceptable and would now have to accommodate a future third pipeline. Staff informed CCSFPUC that they no longer owned enough land to accommodate the third pipeline (they recently sold the land to BART) and their proposed changes would greatly delay the City's project due to the additional design and UPRR approval times required. After meetings between executive staff of CCSFPUC and the City Manager, a compromise was worked out whereby the City would change its current bridge design over the two existing pipes to one that would meet CCSFPUC's needs, but still be acceptable to UPRR. The Grade Separation Project would also install three large steel casings so CCSFPUC could, someday, relocate their two existing pipelines plus install a third one. If the City makes these changes, CCSFPUC

staff has agreed that they will recommend that their Board agree to pay for the cost of installing the three casings and permit the City to cross its existing pipelines using the new bridge design.

On June 27, 2006, the City Council awarded the Washington Boulevard/ Paseo Padre Parkway Earthwork Contract to Galeb Paving, Inc., in the amount of \$2,229,376.10. The contract will result in the grading of the northern portion of the West Coast Ventures property (located between Washington Boulevard and Paseo Padre Parkway between the two railroad tracks), filling the depressed area south of Washington Boulevard, and constructing a portion of the embankment for the future UPRR track relocation. Construction began in late July. The work is approximately 90% complete and the contractor is ahead of the December 2006 completion schedule. Currently, the net increase in the contract value from change orders issued to date is \$2,500 or less than 1% of the original contract value.

**Discussion:** CCSFPUC staff recently informed the City that their geotechnical consultant determined that the soils in the area where their future casings and waterlines are to be placed need to be compacted to avoid future settlement that could damage the future waterlines. Their consultant recommended that 20,000 cubic yards of earth fill ("surcharge") be placed over the location of the future casings to remove all of the settlement. They anticipate that the surcharge will have to be in place for approximately five months to complete the settlement.

Staff informed CCSFPUC that if the surcharge is not placed soon, it would delay the City's upcoming main Grade Separation construction contractor, who, according to the current schedule, should start working in this area in April 2007. It was agreed that the most economically efficient and expedient way to complete this work was to add it to the City's ongoing Earthwork Contract by contract change order.

The work involved in completing the surcharge for CCSFPUC includes clearing the site of all trees and other vegetation, installing a drainage system to expedite the removal of water from the ground, placement of approximately 20,000 cubic yards of earth surcharge, applying erosion control to the constructed surcharge embankment, and placing a chain link fence around the surcharge. CCSFPUC estimates that the cost of the change order to the City's contractor will be approximately \$300,000. To provide for the City's administration costs associated with this work and allow for a large contingency, the Utility Agreement has a not-to-exceed amount of \$450,000 to complete this work.

As part of the City's main Grade Separation construction contract, the City will remove the surcharge and install the three large steel waterline casings for CCSFPUC. The City will also have to replace the trees removed in the area of the surcharge. CCSFPUC will reimburse the City for the cost of this work through a separate agreement that will be brought to Council for approval prior to the January award date for the main construction contract.

Because adding this surcharge to the City's Earthwork Contract is the most feasible way to complete this work without potentially delaying the City's future main Grade Separation construction contract, staff recommends that the Council authorize the City Manager to execute a Utility Agreement with CCSFPUC in an amount up to \$450,000. The CCSFPUC took action at its September 26, 2006 meeting to authorize this agreement.

**ENCLOSURE:** None.

**RECOMMENDATION:** Authorize the City Manager or his designee to execute a Utility Agreement with the City and County of San Francisco Public Utilities Commission in an amount not-to-exceed \$450,000, to reimburse the City for work to be added to the City's ongoing Washington Boulevard/Paseo Padre Parkway Grade Separation Earthwork Contract.

### \*2.7 CLOSE-OUT OF MAINTENANCE CENTER PROJECT; APPROPRIATION OF FUNDS

Approve Close-out of New Maintenance Center Project (PWC 8038) and Corresponding Appropriation of Funds

#### **Contact Person:**

Name: Norm Hughes Jim Pierson Title: City Engineer Director

Dept.: Community Development Transportation and Operations

Phone: 510-494-4748 510-494-4723

E-Mail: nhughes@ci.fremont.ca.us jpierson@ci.fremont.ca.us

**Executive Summary:** In order to complete the City's Maintenance Center Project (PWC 8038), staff is requesting an appropriation of \$324,148 from available fund balance in the Maintenance Fund (Fund 500). This appropriation is necessary to pay the final contract close out amount to the bonding company, Travelers Casualty and Surety Company of America (Travelers), who took over construction of the Maintenance Center after the original contractor defaulted.

**BACKGROUND:** On April 2, 2002, the City Council awarded a contract to Dennis J. Amoroso Construction Company, Inc. (DJA), for construction of the new Maintenance Center. Unfortunately, in early 2004, DJA filed for bankruptcy and defaulted on the contract before the project was complete. The bonding company (Travelers) was required to take over the project (Takeover Agreement approved by Council July 13, 2004), and subcontracted the remaining work out to another general contractor, Ralph Larsen and Sons. As a result, the project completion time took much longer than originally anticipated; the City was not able to take beneficial occupancy of the site till June 2005. The City did not accept the project as complete at that time, however, because of outstanding work not yet completed under the terms of the contract.

During this intervening time, while staff has worked with Travelers and Larsen to ensure that work under the contract was completed, two of the subcontractors on the job filed litigation against Travelers, seeking delay and other damages. Travelers, in turn, filed litigation against the City. The construction of the Maintenance Center is now substantially complete, and the City is in a position to close out the project and resolve the litigation.

**Discussion:** The total contract with Travelers, including change orders, is \$20,290,017 of which \$17,028,165 has been paid, resulting in a remaining balance of \$3,261,852. Travelers has agreed to accept a final payment amount of \$3,000,000 (\$261,852 less than the remaining contract balance) to close out the contract. Travelers will dismiss the litigation and provide the City with all related releases. The City will retain its warranty rights under the contract.

The current appropriated project budget for the Maintenance Center is \$33,326,108. This amount includes total costs for the project, including land acquisition, design, consultant and staff time and includes additional funds which were appropriated by Council in the past several years because of the unanticipated costs incurred due to the default and takeover by the surety, and the ensuing litigation. One of these additional appropriations (Council action: October 12, 2004) included \$586,000 in

anticipated delay damages. Under the settlement, the amount of the contract amount retained by the City is \$261,852 which is roughly half of the amount anticipated in the October 12, 2004 appropriation. As a result, there is a need for an additional appropriation of \$324,148 in order to close out the project and pay the final payment to Travelers.

Staff recommends an appropriation from the Maintenance Fund (Fund 500) in the amount of \$324,148 to fund the project close out. Funding from the Maintenance Fund is possible because of salary savings resulting from unfilled positions in the last year.

**ENCLOSURE:** None.

**RECOMMENDATION:** Transfer \$324,148 from the Maintenance Fund (Fund 500) unallocated fund balance to Fund 501 (Capital Projects General Fund) and appropriate the funds to 501PWC8038 for project close out of the Maintenance Center.

6.1	Report Out from Closed Session of Any Final Action

# 7.1 WASHINGTON BOULEVARD/PASEO PADRE PARKWAY GRADE SEPARATION PROJECT UPDATE AND APPROVAL FOR CONTRACT ADVERTISEMENT Update on the Current Status of the Washington Boulevard/Paseo Padre Parkway Grade Separation Project and Request for Council Authorization to Advertise the Main Construction Contract Documents for Bids

#### **Contact Person:**

Name: Jim Pierson Title: Director

Dept.: Transportation and Operations

Phone: 510-494-4722

E-Mail: jpierson@ci.fremont.ca.us

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Executive Summary: The main construction contract for the Washington Boulevard/Paseo Padre Grade Separation Project will be ready to advertise for construction bids in mid-October. Based on this schedule, bids will be opened in early December and the Council will be asked to award the contract in mid-January. Any delay to this schedule would likely result in additional escalation costs to the contract not anticipated in the current project budget. Staff believes this escalation could be as much as \$200,000 to \$400,000 per month. In addition, the \$11 million State grant that BART received on the City's behalf must be obligated within six months of the date it was approved by the California Transportation Commission (CTC). Since this grant was approved on July 20, 2006, the construction contract must be awarded by January 20, 2007 to avoid losing these funds. Extensions of time are possible, but only if the contract is close to being awarded.

Unfortunately, there are a number of agreements that affect the project costs and funding that are still outstanding. This report explains the status and remaining issues on each of these agreements and how each might affect the Council's decision to award the main construction contract. In addition, the City has not yet secured the \$5 million State Grade Separation grant needed to close the current funding gap.

Based on the current status and the progress that is being made, staff believes the remaining agreements should be in place prior to the January contract award schedule. In addition, staff is continuing to work with Caltrans to secure the \$5 million State Grade Separation grant and believes the City might still be awarded these funds. Therefore, staff is recommending that the Council authorize staff to advertise the main Grade Separation contract for bids. If the remaining funding or other approvals are not fully secured prior to the scheduled contract award date, staff will return to Council with options for next steps.

In addition to the above, this report also recommends the Council approve the inclusion of an asphalt price escalation clause in the main construction contract. This clause would require the City to pay up to \$500,000 of escalation to the contractor if asphalt prices increase above the asphalt price index at time of bid. Such a clause should lead to an increased number of bids and better bid prices due to less risk to the contractors. Overall, staff believes this will result in a less expensive contract for the City.

**BACKGROUND:** The Washington Boulevard/Paseo Padre Parkway Grade Separation Project generally consists of constructing an underpass at Paseo Padre Parkway and an overpass at Washington Boulevard, and relocating approximately 1.5 miles of Union Pacific Railroad (UPRR) track. City staff and its consultants have been working for several years on the design, funding, property acquisitions, environmental permits, and numerous agreements with various entities required to advertise and award the Project's main construction contract.

All property rights have been secured, although a few properties have not yet settled on the final price. All environmental and regulatory permits are in place. Agreements have been completed with BART, Santa Clara VTA, Union Pacific Railroad, Alameda County Water District, Kinder Morgan, P.G.&E., and MCI. The design has been completed and final comments are being incorporated. The current schedule calls for the main construction contract to be advertised for bids on October 16, 2006, leading to a bid opening on December 5<sup>th</sup> and contract award by the City Council on January 9, 2007. Based on current estimates, the project budget remains at \$96 million.

**Discussion:** Although the contract is ready to advertise for bids, there continues to be a \$5 million funding gap and several agreements, including some related to funding and cost sharing are still outstanding. These outstanding issues are summarized below.

<u>Funding Status:</u> In March 2006, the Council agreed to a funding plan to close the \$21 million funding gap for the \$96 million project. The plan consists of three elements. First, the Council and the Redevelopment Agency Board agreed to allocate \$5.1 million in the RDA budget that is currently appropriated for "Interchange/Grade Separation Construction Contingencies". Second, the Council agreed to have BART pursue \$11 million in State Traffic Congestion Relief Program (TCRP) funds that were allocated to the BART Warm Springs Extension (WSX) Project in exchange for the City supporting future STIP funds for WSX that otherwise would come to the City. This funding has been approved by the CTC. However, as discussed below under "BART TCRP Agreement", the agreement to transfer the funding from BART to the City has not yet been completed.

The third part of the funding plan includes \$5 million from the State Grade Separation account. The City has been turned down for these funds since the UPRR contribution is capped and Caltrans' interpretation of the grant rules is that the railroad must contribute 10% of the final project cost with no cap on the amount of the contribution. Staff continues to believe that the City's Grade Separation Project should qualify for funding and will continue to meet with Caltrans staff in an attempt to assert this position. If these funds are not committed in the next couple of months, staff will return to Council to discuss other options to close the funding gap and keep the project on schedule.

BART TCRP Agreement: As mentioned above, the CTC has approved BART's use of \$11 million of its TCRP funding from the WSX project for the City's Grade Separation. BART has prepared a cooperative agreement between BART and the City that spells out the terms of how the City will receive these funds from BART to reimburse a portion of our construction costs. Unfortunately, BART staff has informed City staff that BART cannot execute this agreement until it receives its Record of Decision (ROD) on its Final Environmental Impact Statement (FEIS) for WSX from the Federal Transit Administration (FTA). Apparently, the FTA will not let BART make any further funding commitments until the Record of Decision is issued. According to BART, they anticipate the ROD being issued in October. If the ROD is delayed for some reason, it may be possible for BART to ask FTA to allow them to execute this funding

agreement due to the hardship it would cause for the City if it is not executed in a timely fashion. Previously, FTA allowed BART to execute the Property Exchange Agreement with the City based on this same hardship issue.

The CTC requires that TCRP funds be obligated within six months of approval. Since the CTC approved these funds on July 20, 2006, they must be obligated by awarding our construction contract by January 20, 2007. If the contract is not awarded by then, we can request an extension from the CTC. Historically, the CTC will only approve an extension if it can be demonstrated that the contract will be awarded soon. If we do not make the CTC deadline, the funds will be withdrawn.

BART Construction and Utility Cost Sharing Agreement: The main Grade Separation construction contract includes several items that are not required for the Grade Separation but will allow the future BART WSX to be constructed more efficiently and minimize future construction impacts on Fremont residents. Items included in the contract for BART include the BART bridge over Paseo Padre Parkway, increased height of one of the retaining walls, and some of the fill material for the future BART trackway. In addition, the relocation of PG&E and MCI facilities are also being designed to remove conflicts from both the Grade Separation and future BART projects to avoid the utilities from having to relocate twice. The improvements being constructed for BART are valued at approximately \$2.8 million

To pay for these items, BART and the City will need to enter into a cost sharing agreement. BART has reviewed the initial draft of this agreement. It is anticipated that the agreement will be in final form in the next two months and ready for approval by the City Council and the BART Board. However, similar to the "BART TCRP Agreement", FTA is prohibiting BART from executing this Agreement until it has received the Record of Decision on its FEIS. As with the BART TCRP Agreement, if the ROD is unreasonably delayed, BART may be able to receive permission from FTA to execute this Agreement based on the hardship it would cause to the City if it is delayed.

Agreement with City and County of San Francisco Public Utilities Commission (CCSFPUC): As part of the Grade Separation Project, the UPRR tracks must be relocated and cross over the two existing Hetch-Hetchy waterlines in a new location. Staff has been working with CCSFPUC staff for several years regarding the design of the new UPRR bridge. Approximately a year ago, the bridge design was 90% complete. However, a few months ago, CCSFPUC management told City staff that the existing bridge design was not acceptable and would now have to accommodate a future third pipeline. Staff informed CCSFPUC that they no longer owned enough land to accommodate the third pipeline (they had recently sold the land to BART) and their proposed changes would greatly delay our project due to the additional design and UPRR approval times required. After meetings between executive staff of CCSFPUC and the City Manager, a compromise was worked out whereby the City would change its current bridge design over the two existing pipes to one that would meet CCSFPUC's needs, but still be acceptable to UPRR. The Grade Separation Project would also install three large steel casings so CCSFPUC could, someday, relocate their two existing pipelines plus install a third one. If the City makes these changes, CCSFPUC staff has agreed that they will recommend that their Board agree to pay for the cost of installing the three casings and permit the City to cross its existing pipelines using the new bridge design. Because this understanding was reached at such a late date, to maintain the advertisement schedule, the new UPRR bridge design will only be able to reach a 60% design level. Staff believes this is a sufficient level of

design to receive good bids. The remaining bridge details will then be added to the contract by change order once the contract is awarded.

CCSFPUC has agreed to prepare an agreement to spell out the terms of the staff understandings. City and CCSFPUC staffs have agreed to have the agreement completed and executed prior to the City's contract award date. The CCSFPUC Deputy General Manager has assured staff that they will not delay the City's project and will ensure the City receives the approvals it needs from CCSFPUC to stay on schedule.

Cooperative Agreement with Alameda County Water District (ACWD): Several ACWD waterlines exist within Washington Boulevard. Since these lines are all within the City's street right-of-way, ACWD must pay for the relocation of these waterlines. It is most efficient if these lines are relocated by the main Grade Separation contractor instead of by ACWD. Therefore, a cooperative agreement is needed between ACWD and the City to spell out how the City's contractor will relocate the waterlines and how ACWD will reimburse the City for this work. This work is valued at approximately \$355,000. Several drafts of the ACWD Cooperative Agreement have been exchanged between the City and ACWD and it is now close to being finalized. It is anticipated this Agreement will be brought to the City Council and ACWD Board within the next two months.

Settlement and Development Agreements with West Coast Ventures: West Coast Ventures owns the property between Washington Boulevard and Paseo Padre Parkway between the two sets of railroad tracks. The Grade Separation requires a strip of their property along their eastern boundary. Once the City's project is completed and the UPRR tracks are relocated, the remaining West Coast property could be rezoned to residential. To avoid the possibility of having to pay large damage claims as a result of this property acquisition, staff and West Coast have been developing a Settlement Agreement and a Development Agreement that would provide West Coast with a mechanism to quickly move their project forward, subject to required Council approvals, utilizing some of the existing UPRR property (for emergency vehicle access and setbacks) that the City will own after the UPRR relocation. If these agreements are approved by the City Council, it would solidify the cost for the Grade Separation Project for this major property acquisition. Although these agreements are not required for the City to construct the Grade Separation Project, without them, the cost of the acquisition of the West Coast property would remain in question and could negatively impact the Grade Separation budget.

<u>Utility Relocation Agreements with Level 3, Qwest, Sprint and PG&E:</u> The City has executed all of the utility relocation agreements that had to be completed prior to award of the main construction project. However, staff continues to work on the relocation agreements with Level 3, Qwest, Sprint and the second phase of PG&E's relocation. Although these agreements are not needed prior to award of the main construction contract, until they are executed staff must use its own estimates of what these relocations will cost. Therefore, it is important that these agreements are completed in a timely fashion to help solidify the Grade Separation budget.

Asphalt Escalation Clause: Over the last several years, there has been a dramatic increase in the price of paving asphalt. For multi-year construction contracts, like the main Grade Separation contract, this means the asphalt prices at the time of bid can increase substantially over the duration of the contract. Therefore, to avoid the substantial risk of losing money on their asphalt bids, many contractors now choose to either apply premiums to their bid prices to account for the worst possible escalation, or not

bid on the project at all. In response, many public agencies that build large, multi-year roadway projects are using an asphalt escalation clause in their bid documents to reduce the risk to the contractor and receive the most competitive bids possible. Caltrans now uses an asphalt escalation clause on the majority of its roadway contracts. Similarly, the cities of San Jose and Concord have recently started using escalation clauses.

Staff believes an asphalt escalation clause for the main Grade Separation contract would result in reduced costs to the City by reducing contractor risk and attracting more bidders. The main construction contract will take approximately three years to complete, with the majority of the asphalt paving coming near the end of the contract. Therefore, the risk to contractors bidding on our contract due to increasing asphalt prices is substantial. After reviewing several clauses used by various agencies, staff is recommending utilizing an asphalt escalation clause similar to one recently used by the City of San Jose, whereby the price paid for asphalt is allowed to fluctuate either up or down based upon the monthly California Statewide Paving Asphalt Pricing Index. The City of San Jose specification is similar to the Caltrans standard asphalt escalation specification except that it caps the total amount of additional compensation the contractor can receive regardless of the increase in price. It also caps the total amount of credit the City can receive if the price of asphalt decreases.

Based on staff's analysis of the amount of asphalt needed for the main construction contract and the possible increase in asphalt prices over a three year period, staff recommends that the maximum additional compensation allowed in the Grade Separation asphalt escalation clause be set at \$500,000 and that the maximum reduction in compensation also be set at \$500,000. Any additional compensation required to be paid to the contractor as a result of this clause would be paid from the project construction contingency. Currently, the project budget includes a construction contingency of nearly \$5 million. Staff believes including such a clause will result in a greater number and more competitive bids on the main contract, resulting in an overall lower cost to the City.

<u>Summary:</u> Typically, before a project is advertised for construction bids, all of the agreements with affected agencies are in place and the funding is completely secured. Although this would be the preferred procedure for the main Grade Separation construction contract, the project could be in jeopardy if the current bid and award schedule is not maintained. If bids are not awarded by January 20, 2007 (or close to this date), the CTC may repeal their \$11 million TCRP grant to the project. Second, any delay in the bid opening of the contract beyond December 2007 could result in \$200,000 to \$400,000 of additional price escalation costs to the City for each month of delay.

In summary, the outstanding issues that could impact the awarding of this contract and staff's analysis of the risk are as follows:

- 1. The \$5 million State Grade Separation grant has not yet been secured. Staff continues to work with Caltrans to obtain approval for this funding. If these funds are not committed in time, the contract cannot be awarded unless the City identifies a source for these additional funds.
- 2. The BART TCRP Agreement must be executed to receive \$11 million of TCRP funds, but BART cannot execute the Agreement until they receive their Record of Decision. BART believes the ROD will be received in October. If not, the City can ask BART to request the FTA to allow the Agreement to be approved based on hardship to the City. The project cannot proceed without this agreement being executed unless the City could identify an additional \$11 million in funding.

- 3. The BART Construction and Utility Cost Sharing Agreement must be executed before the City can be reimbursed for the approximately \$2.8 million of BART work included in the main contract. BART cannot execute the Agreement until they receive the ROD, but FTA could allow it based on hardship to the City. The project could be awarded without this agreement, but the City would be at risk of not being reimbursed and not having adequate funding to complete the project.
- 4. The Agreement with the City and County of San Francisco is needed to receive formal approval for the City to construct the new UPRR bridge over the existing Hetch-Hetchy waterlines. It is also needed to ensure reimbursement of the three large casings to be installed for CCSFPUC as part of the City's main contract. If this agreement is not executed prior to award, the contractor could be delayed by CCSFPUC not allowing them to construct the bridge on time. In addition, the City would be at risk of not being reimbursed for the cost of the casings. CCSFPUC has assured City staff it will not delay the City's project and they are working to have the Agreement in place prior to award of the City's contract.
- 5. The Cooperative Agreement with ACWD is needed to ensure reimbursement from ACWD of the waterline work included in the main contract. If this agreement is not executed, the City would be at risk of not being reimbursed. This agreement is close to being completed and few issues remain. Staff does not believe it will impact contract award.
- 6. Although there are other outstanding agreements with West Coast Ventures, Level 3, Qwest, Sprint and PG&E, these agreements do not affect the contract award other than the uncertainty of their cost impacts to the project.

Although these issues remain outstanding, staff believes that most, if not all, of them can be resolved prior to the contract award date. To the degree they are not, or if conditions change, staff will return to the Council during the bidding process with further information and possible options for Council consideration. Additional information may also be available at the October 3, 2006 Council meeting when this item is before the Council.

Based on the above, staff recommends the Council authorize staff to advertise the main Grade Separation construction contract in October and include an asphalt escalation clause.

**ENCLOSURE:** None.

**RECOMMENDATION:** Authorize the advertisement of the main Washington Boulevard/Paseo Padre Parkway Grade Separation construction contract and approve including an asphalt escalation clause with a maximum increase or decrease in compensation of \$500,000.

#### **8.1 Council Referrals** – None.

#### 8.2 Legislation

8.2.1 Discussion of City Position on Proposed Legislation Described in the League of California Cities Priority Focus No. 37-2006. Council may direct staff to act on positions taken by Council.

Enclosure: League of California Cities Priority Focus Bulletin (Copies Available in the City Clerk's Office).

#### 8.3 Oral Reports on Meetings and Events

#### **ACRONYMS**

ABAG	Association of Bay Area	FEMA	. Federal Emergency Management
	Governments		Agency
ACCMA	Alameda County Congestion		. Fremont Municipal Code
	Management Agency		. Fremont Police Department
	Altamont Commuter Express	FRC	. Family Resource Center
ACTA	Alameda County Transportation		. Fremont Unified School District
	Authority		. Geographic Information System
ACTIA	Alameda County Transportation	HARB	. Historical Architectural Review
	Improvement Authority		Board
ACWD	Alameda County Water District	HBA	. Home Builders Association
ARPAC	Ardenwood Regional Preserve	HRC	. Human Relations Commission
	Advisory Committee	ICAP	. Integrated Capital Assets Plan
BCDC	Bay Conservation & Development	ICMA	. International City/County
	Commission		Management Association
BMPs	Best Management Practices	JPA	. Joint Powers Authority
	California Public Employees'	LLMD	. Lighting and Landscaping
	Retirement System		Maintenance District
CBD	Central Business District	LOCC	. League of California Cities
	Community Commercial		. Level of Service
	Covenants, Conditions & Restrictions	MOU	. Memorandum of Understanding
	Community Development Block		. National League of Cities
	Grant		. National Pollutant Discharge
CEOA	California Environmental Quality Act		Elimination System
	Community Emergency Response	NPO	. Neighborhood Preservation
02111	Team		Ordinance
CIP	Capital Improvement Program	PC	. Planning Commission
	Congestion Management Agency		. Public Utilities Commission
	Compressed Natural Gas		. Public Works Contract
	City of Fremont		. Redevelopment Agency
	Community Oriented Policing and		. Request for Proposals
00110	Public Safety		. Request for Qualifications
CSAC	California State Association of		. Regional Occupational Program
00110	Counties		. Residential Rent Increase Dispute
CTC	California Transportation	raabito	Resolution Ordinance
C1C	Commission	RWOCB	. Regional Water Quality Control
DEIR	Draft Environmental Impact Report	KWQCD	Board States Quanty Control
	Development & Environmental	SACNET	. Southern Alameda County Narcotics
DL5	Services	5/1C/1C/	Enforcement Task Force
DO	Development Organization	STIP	. State Transportation Improvement
	East Bay Regional Park District	5111	Program
	East Bay Regional Fark District Economic Development Alliance for	TCDDE	. Tri-Cities Recycling and Disposal
EDAD	Business (County)	TCKDI	
EDAC	Economic Development Advisory	TC/MDE	Facility . Transfer Station/Materials Recovery
EDAC	1	1 5/ WIKI	
EID	Commission (City)	HCD	Facility Union Sonitory District
	Environmental Impact Report		. Union Sanitary District
	Environmental Impact Statement	V 1 A	. Santa Clara Valley Transportation
EKAF	Education Revenue Augmentation	XX7N # A	Authority
EAD	Fund		. Waste Management Authority
гак	Floor Area Ratio	Z1A	. Zoning Text Amendment

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## UPCOMING MEETING AND CHANNEL 27 BROADCAST SCHEDULE

Date	Time	Meeting Type	Location	Cable Channel 27
October 9, 2006 (Monday)	4:00 p.m.	Joint City Council/FUSD Mtg.	Council Chambers	Live
October 10, 2006	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 17, 2006	TBD	Work Session	Council Chambers	Live
October 24, 2006	7:00 p.m.	City Council Meeting	Council Chambers	Live
October 31, 2006 (5 <sup>th</sup> Tuesday)		No Council Meeting		
November 7, 2006	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 14, 2006	7:00 p.m.	City Council Meeting	Council Chambers	Live
November 21, 2006	TBD	Work Session	Council Chambers	Live
November 28, 2006	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 5 2006	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 12, 2006	7:00 p.m.	City Council Meeting	Council Chambers	Live
December 19, 2006	TBD	Work Session	Council Chambers	Live